

**APPENDIX 3.5.2.1-1**

**Trego Project Existing FERC License**

19940603-3046(822970)

UNITED STATES OF AMERICA 67 FERC ¶ 61, 282  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;  
Vicky A. Bailey, James J. Hoecker,  
William L. Massey, and Donald F. Santa, Jr.

Northern States Power Co.        )                    Project No. 2711-002

ORDER ISSUING LICENSE

(Issued June 2, 1994)

On March 25, 1991, Northern States Power (Northern) filed an application under Part I of the Federal Power Act (FPA) 1/ for a subsequent license 2/ to continue to operate and maintain the 1.2 megawatt (MW) Trego Project No. 2711. The project is located on the Namekagon River in the town of Trego in Washburn County, Wisconsin. For the reasons discussed below, we will issue the license.

Notice of the application was published. The Wisconsin Department of Natural Resources filed a motion to intervene but did not take a position on the license. American Rivers, Inc. filed a motion to intervene. The U.S. Department of the Interior (Interior) did not seek intervenor status, but filed comments. American Rivers does not oppose continued operation of the Trego Project (with appropriate conditions), but asserts that the Commission lacks authority to issue the project a subsequent license. 3/ Interior maintains that it has authority to require conditions pursuant to Section 4(e) of the FPA because the project is located within the Wild and Scenic Rivers System which Interior administers. These arguments are addressed below, and all other comments of intervenors, agencies, and individuals

1/ 16 U.S.C. §§ 791(a)-823(b).

- 2/ A subsequent license is a license issued after the expiration of a minor license for which Sections 14 and 15 of the FPA (dealing with relicensing) were waived. 18 C.F.R. § 16.2(c) (1992). Although, in a letter filed March 25, 1991, Northern stated its assumption that the initial license order for the Trego project did not waive Sections 14 and 15 of the FPA, the license order did do so. See 57 FPC 1527 (1977). The initial license order gave Northern an opportunity to file a supplemental application if it did not wish the provisions to be waived (see 57 FPC at 1531), but we have no evidence that it ever did so.
- 3/ Interior initially also made this assertion, but later changed its position. See discussion, *infra*.

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have been considered in determining whether, or under what conditions, to issue this license. 4/

An Environmental Assessment (EA) was issued on February 27, 1992, and is attached to and made a part of the license. A Safety and Design Assessment is available in the Commission's public file on this project.

#### A. PROJECT DESCRIPTION

The project facilities, which are described more fully in ordering paragraph (B)(2) below, consist of a dam comprised of two embankment sections, one 380 feet long and 30 feet high, the other 110 feet long and 25 feet high; a spillway structure 92 feet long by 27 feet high, surmounted by three Taintor gates, each 25.5 feet long by 10 feet high, and a 6-foot-wide trash gate and sluiceway; an impoundment about 6 miles long, with a surface area of 470 acres and an estimated storage capacity of 4,700 acre-feet at the normal water surface elevation; a powerhouse located adjacent to the left end of the spillway structure; two turbine-generator units rated at 700 kilowatts (kW) and 500 kW, for a total installed capacity of 1,200 kW; a small substation, feeding directly into Northern's distribution system; and appurtenant equipment and facilities. Northern proposes no new construction.

B. JURISDICTION

The Trego Project was constructed in 1926. The Namekagon River, on which it is located, is a tributary of the St. Croix River. In 1968, the Wild and Scenic Rivers Act (Rivers Act) designated parts of the St. Croix River and all of the 98-mile-long Namekagon River as the St. Croix National Scenic Riverway, to be administered by Interior. 5/ In 1977, the Commission

- 4/ Comments were filed by Interior, the Wisconsin Public Service Commission, the Wisconsin Department of Natural Resources, the Wisconsin State Historical Society, the Trego Lake District, U.S. Senator R.W. Kasten, S. Rowan, Barbara and Richard Ford, John W. Beissel, Paula and John Ford, Charles and Angela Kandlik, E.R. Emerson, Bruce Kearns, and A.A. Metcalf.
- 5/ See Section 3(a)(6) of the Rivers Act, 16 U.S.C. § 1274(a)(6). The Secretary of Agriculture administers wild and scenic rivers that are adjacent to or surrounded by national forest lands. The Secretary of the Interior administers components of the wild and scenic rivers system through the National Park Service as part of the national park system, and through the Fish and Wildlife Service as part of the national wildlife refuge system.



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issued an original license for the Trego Project, based on its determination that the Namekagon River is a navigable waterway of the United States. 6/ Section 7(a) of the Rivers Act, 16 U.S.C. § 1278, bars the Commission from licensing "the construction of" any dam, water conduit, or other project works "on or directly affecting any river which is designated ... as a component of the national wild and scenic rivers system ...." Since the Trego Project predates the Rivers Act, and so long as no new construction is proposed, Section 7(a) of the Rivers Act does not bar the issuance of a license for its continued operation, nor has anyone asserted otherwise.

However, the Rivers Act also provides that any component of the national wild and scenic rivers system administered by Interior through the Park Service shall become a unit of the national park system. 7/ Citing the General Authorities Act

- 6/ Northern States Power Company, 57 F.P.C. 1527 (1977). Under Section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), projects located on navigable waterways of the United States are required to be licensed. Interior and the Wisconsin Department of Natural Resources filed comments on the original license application. No one opposed issuance of the original license. The license order mentions the 1968 Rivers Act designation, not in the "jurisdiction" discussion but in the "recreation" discussion, where it states:

Since the Trego Project is located within the St. Croix National Scenic Riverway system which is administered by the National Park Service (NPS) (Section 3(a)(6), P.L. 90-542), and the Namekagon River has been selected for recreational development by the NPS, we are not approving the voluntarily filed Exhibit R Text and recreation map.

Article 23 of the project license provides for a cooperative field study with NPS and DNR and a determination of what, if any, additional recreational development should be provided in the Trego Project area.

- 7/ 16 U.S.C. § 1281(c) of the Wild and Scenic Rivers Act provides:

Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system .... The lands involved shall be

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of 1970, American Rivers asserts 8/ that, since the Trego Project is located in a unit of the national park system, it is subject to the rules and regulations applicable to all units of the park system. From this they reason that, since the FPA prohibits the issuance of licenses for projects located in national parks and monuments, the Commission lacks jurisdiction to issue licenses for projects located in any unit of the park system. 9/

Section 4(e) of the FPA 10/ authorizes the Commission to issue licenses for projects which, inter alia, are located on reservations of the United States. 11/ Section 3(2) of the FPA 12/ defines the term "reservations" to exclude "national monuments or national parks." 13/ The Authorities Act of 1970

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subject to the provisions of this chapter and Acts under which the national park system ... is administered .... The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this chapter.

8/ July 24, 1991 motion to intervene.

9/ Interior originally made this argument as well. See the November 20, 1991 letter (filed November 25) from the Director, Office of Environmental Affairs, Office of the Secretary of the Interior, to the Commission Secretary, at 1. Interior revised its position in a letter dated December 8, 1993 (discussed below).

10/ 16 U.S.C. § 797(e).

11/ As we discuss below, the Trego Project is not located on federal lands of any kind, and therefore is not located on a reservation. However, a unit of the National Park System can encompass non-federal lands.

12/ 16 U.S.C. § 796(2).

- 13/ The Commission has interpreted the Section 3(2) prohibition on issuing licenses for projects in national monuments or parks as not being a bar to the relicensing of projects that  
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defines "the national park system" to include "any area of land and water now or hereafter administered by the Secretary of the Interior through the Park Service for park, monument, historic, parkway, recreational, or other purposes." 14/ In addition to national parks and national monuments, the national park system now includes, inter alia, national memorials, national cemeteries, national recreation areas, national seashores, national seashore recreational areas, national parkways, national conservation areas, national conservation recreational areas, national historic sites, national lakeshores, national rivers, national battlefields, and national farm parks. But while national parks and monuments are units of the national park system, all other units of the park system are not national parks or monuments; the Commission has previously held that the FPA's specific prohibition on licensing projects in national parks and monuments does not extend to any other park system unit. 15/

While the national park system was growing, Congress enacted a variety of statutes authorizing the Secretary of the Interior to deal with the details of its operation. Since these statutes did not clearly apply to all units of the park system, there was concern that the scope of the statutes would be limited to those units of the park system specifically named therein. 16/ To address this concern, the Authorities Act of 1970 provides: 17/

Each area within the national park system shall be administered in accordance with the provisions of any

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were originally licensed before the lands they occupied were designated as national monuments or parks. See James River II, Inc., 53 FERC ¶ 61,096 (1990), reh'g denied, 55 FERC

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¶ 61,034 (1991), appealed, Olympic Park Associates, et al. v. FERC, 9th Cir. No. 91-70351 (filed May 31, 1991), in abeyance in light of Elwha River Ecosystem and Fisheries Restoration Act, Pub. L. No. 102-495 (Oct. 24, 1992). These orders contain detailed discussion of the legislative history of Section 3(2) of the FPA and of pertinent case law.

14/ 16 U.S.C. ¶ 1c(a).

15/ Gentry Resources Corporation, 32 FERC ¶ 61,137 (1985). As discussed below, enactment of Section 2404 of the Energy Policy Act of 1992 has limited this decision.

16/ See H.R. Rep. No. 1265, 91st Cong., 2d Sess. (1970), reprinted in 1970 U.S.C.C.A.N. 3785.

17/ 16 U.S.C. ¶ 1c(b).

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statute made specifically applicable to that area. In addition, the provisions of this Act, and the various authorities relating to the administration and protection of areas under the administration of the Secretary of the Interior through the National Park Service, . . . shall, to the extent such provisions are not in conflict with any specific provision, be applicable to all areas within the national park system[,] and any reference in such Act to national parks, monuments, recreation areas, historic monuments, or parkways shall hereinafter not be construed as limiting such Acts to those areas.

However, that Congress provided for the uniform administration of all units of the national park system does not, as American Rivers argues, mean that all units of the park system are national parks or monuments for purposes of Section 3(2) of the FPA. 18/

In the Energy Policy Act of 1992, 19/ Congress broadened the prohibition on original licenses to encompass not only all

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projects located in national parks and monuments but also certain other projects located in any unit of the national park system. Section 2402 of that Act provides:

After the date of enactment of this Act, the Federal Energy Regulatory Commission may not issue an original license under Part I of the Federal Power Act (nor an exemption from such Part) for any new hydroelectric power project located within the boundaries of any unit of the National Park System that would have a direct adverse effect on Federal lands within any such unit. Nothing in this section shall be construed as repealing any existing provision of law (or affecting any treaty) explicitly authorizing a hydroelectric power project.

18/ Since 1971, Congress, when providing for the addition of new components to the park system other than national parks or monuments, has specifically prohibited the Commission from licensing new projects in at least five instances: Buffalo National River, 16 U.S.C. § 460m-11; New River Gorge National River, 16 U.S.C. § 460m-21; Big South Fork National River and Recreation Area, 16 U.S.C. § 460ee; Hells Canyon National Recreation Area, 16 U.S.C. § 460gg-2; Chattahoochee River National Recreation Area, 16 U.S.C. § 460ii-3. If the reference to national parks and monuments in the FPA applied to all units of the park system, there would be no reason for Congress to specifically prohibit the licensing of new projects in these areas.

19/ Pub. L. No. 102-486, 106 Stat. 2776-3133 (Oct. 24, 1992).

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By letter dated December 8, 1993, Interior amended its comments on the Trego Project application to reflect its interpretation of Section 2402. 20/ Interior stated:

Because the Trego dam is on the Namekagon River which is included in the Saint Croix National Scenic Riverway, it is located in a unit of the National Park System. As a unit of the National Park System, the

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Saint Croix National Scenic Riverway is subject to the Energy Policy Act of 1992 and, more specifically, to Section 2402. Under Section 2402, the National Park Service (NPS) has determined that the issuance of a new original license for the Trego Hydro Project would not have a direct adverse effect on Federal lands within the Saint Croix National Scenic Riverway, subject to the terms and conditions included below [i.e., under the Section 4(e) Terms and Conditions section of the letter]. We take this position in light of the fact that the project was in operation before designation by Congress of the Saint Croix National Scenic Riverway, and has operated without creating adverse impacts to prompt our objection to a new original license.

Interior's December 8, 1993 letter indicates that Interior has receded from its former position that the Commission lacks jurisdiction to issue a license of any kind, original or new, for any kind of project, new or existing, in any unit of the National Park System. 21/ However, Interior's letter nevertheless misapplies Section 2402. The letter discusses issuance of a "new original license." There is no such thing. Section 2404 applies only to any "original license" issued for any "new hydroelectric power project" within any unit of the National Park System. By contrast, the Trego Project is the subject, not of an original license, but of a subsequent license for an existing project. 22/ Indeed, Northern's license application for the

20/ December 8, 1993 letter to the Commission Secretary from the Director of the Office of Environmental Policy and Compliance, Office of the Secretary of the Interior, at 1.

21/ See n. 9, supra.

22/ See Sections 7(a) and 15(a) of the FPA, 16 U.S.C. §§ 800(a), 808(a). See also 18 C.F.R. § 4.30(b)(19) (1993):

"New license" means any license, except an annual license issued under section 15 of the Federal Power Act, for a water power project that is issued under the Federal Power Act after the initial license for that project.

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Trego Project (and the license issued today) does not contemplate any new construction at the project. As such, the project does not fall within the terms of Section 2402, and does not require a finding 23/ regarding its effect on federal lands within the Park System unit. 24/

23/ The Commission has not yet addressed the issue of which agency is to make such a finding.

24/ On March 10, 1994, Interior filed a letter in which it acknowledged that there are no federally owned lands within the project boundary, but argued that the project nevertheless is subject to terms and conditions submitted by Interior under Section 4(e) of the FPA because it is located on a component of the National Wild and Scenic Rivers System administered by the Secretary of the Interior. Section 6(a)(1) of the Rivers Act gives the Secretary authority to acquire lands along segments of the National Wild and Scenic Rivers System. However, the Secretary has not exercised that authority in this instance. Thus, Interior appears to be maintaining that administrative authority, by itself, gives it conditioning authority under Section 4(e). We have been unable to find any support, in either the FPA or the Rivers Act, for Interior's position.

As defined by Section 3(2) of the FPA, 16 U.S.C. § 796(2), a reservation, for the purposes of the FPA, embraces only "lands and interests in lands owned by the United States." See *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 111, 114 (1959) ("Congress intended the term 'reservations,' whenever used in the Act, to embrace only 'lands and interests in lands owned by the United States.'"). We also note that the Rivers Act does not define the term "reservation," or confer "reservation" status on any of the land through which components of the Wild and Scenic Rivers System flow, let alone purport to define the term for purposes of the FPA.

Although Interior does not have authority in this proceeding to require terms and conditions pursuant to Section 4(e), the conditions submitted by Interior are, in substance, adopted in the license. License Article 401 requires that

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the project be operated in a run-of-river mode; Article 405 requires that the Park Service and the Wisconsin Department of Natural Resources be consulted on any drawdown management plan; Article 408 requires that the licensee consult with the resource agencies about recreational use of the project in conjunction with the preparation of FERC Form 80, which must be filed with the Commission every six years (Interior had requested recreation and land use review every five  
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In light of all of the above, we conclude that the Commission has authority to issue a subsequent license for the continued operation and maintenance of the Trego Project.

#### C. WATER QUALITY CERTIFICATION

On March 19, 1990, Northern filed a request for water quality certification with the Wisconsin Department of Natural Resources (Natural Resources), which on September 12, 1990, issued a notice of preliminary determination of waiver of certification. On December 3, 1990, Natural Resources notified Northern that the preliminary determination of waiver was final.

#### D. FISHWAYS

Section 18 of the FPA provides that the Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such fishways as may be prescribed by the Secretary of the Interior or of Commerce. Pursuant to Section 18, Interior requests that any license issued for this project include a reservation of authority for it to prescribe the construction, operation, and maintenance of fishways. 25/ Consistent with Commission practice, 26/ Article 404 of the license reserves authority to the Commission to require the licensee to construct, operate, and maintain such fishways as may be prescribed by Interior pursuant to Section 18 of the FPA.

#### E. RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j) of the FPA requires the Commission to include license conditions, based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act, for the protection of, mitigation of adverse impacts to, and enhancement of fish and wildlife, unless such conditions would conflict with the FPA or other law. 27/

24/(...continued)

years); and Article 409 requires that resource agencies be consulted before any land is conveyed.

25/ See letter dated November 20, 1991, from Jonathan P. Deason, Director, Office of Environmental Affairs, Office of the Secretary, U.S. Department of the Interior.

26/ See Wisconsin Public Service Corp., 62 FERC ¶ 61,095 (1993).

27/ Measures recommended by Natural Resources that are not appropriate fish and wildlife recommendations under  
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The EA for the Trego Project addresses the concerns of the federal and state fish and wildlife agencies in detail, and the license includes conditions consistent with the agencies' recommendations that Northern: (1) operate the project in a run-of-river mode, using new controls installed in 1990 that narrow the normal operating range of the power pool to within 0.3 foot of total fluctuation, providing stabilized and near-natural aquatic conditions for fish and wildlife at the impoundment and downstream; (2) fund Natural Resources' programs for the restoration of the sturgeon and gilt darter upstream of the project; (3) maintain the existing trashracks with 1.5-inch bar spacing to minimize fish entrainment and impingement; (4) formulate a drawdown management plan to evaluate the need for and, if needed, to implement a drawdown to control sediment accumulation and aquatic vegetation, to provide better recreational access and use of the upper impoundment; and, (5) provide fish passage facilities if future needs require.

1. Project Operation

Northern has committed to continue run-of-river operation of the project, maintaining the minimum flow at 230 cfs or inflow, whichever is less, and to maintain the impoundment level within 0.3 feet of the target elevation of 1034.9 feet msl (mean sea level) during routine operation, or within 0.6 feet during emergency operations. All parties agree that the Trego Project should be operated in a run-of-river mode, but there has been some disagreement about the maintenance of a stabilized impoundment level.

Natural Resources and Interior recommend that the elevation of the impoundment fluctuate from the target elevation no more than 0.1 feet in the winter and 0.3 feet in the summer. Natural Resources also recommends that the elevation of the impoundment be allowed to vary up to 0.6 feet under extreme conditions, such as flood flows, equipment malfunctions, or operational emergencies, provided that these terms are clearly defined and agreed to beforehand by Natural Resources. Interior suggested that elevation limits not be modified beyond recommended limits without the prior concurrence of Natural Resources, the U.S. Fish and Wildlife Service (FWS), and the Park Service.

Northern proposes a 0.3 foot normal operation range year round. Northern states that it attempts to maintain impoundment

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Section 10(j) have been considered in the EA pursuant to Section 10(a)(1) of the FPA. These include recommendations concerning development of a drawdown management plan, consistency with comprehensive plans, a macrophyte survey, and recreational user surveys.



fluctuations at the levels suggested by Natural Resources but believes that imposition of a more restrictive operating range in winter is both technically difficult and unjustified from an environmental perspective. Northern agrees with the recommended

0.6-foot variation during extreme conditions, but does not agree with the recommendation that all future deviations from normal levels be clearly defined and approved by Natural Resources, FWS, and the Park Service, because events beyond its control could cause variations in the impoundment level, and it should not be necessary to define every possible occurrence that could cause a variance from the normal operating range.

We conclude that run-of-river operation, with a 0.3 foot fluctuation limit, would not alter streamflow upstream or downstream of the project; therefore, fish and wildlife habitats, including wetland areas, would not be affected by project operation. We believe that the more restrictive 0.1 foot fluctuation during the winter would not be technically feasible and biologically would have no purpose. Also, we find that many factors can cause changes in the elevation of the Trego impoundment, and we believe that Northern should not be penalized if, while making a good-faith effort to remain within the normal operating range, it fails to achieve any overly restrictive target elevation objectives. Therefore, we will not require Northern to maintain a more restrictive impoundment fluctuation during the winter, or to enter into an agreement with the resource agencies to define all of the extreme operating conditions that could occur. The normal elevation limits for the impoundment should be lifted under extreme conditions, such as floods, ice jams, equipment malfunction, or operational emergencies. Article 401 requires that the project be operated in a run-of-river mode, sets a target elevation for the Trego impoundment at 1,034.9 feet, and allows for a fluctuation of 0.3 feet around the target elevation. Article 401 also provides for a temporary modification of run-of-river operation in emergencies and for short periods in non-emergency situations upon mutual agreement between Northern, Natural Resources, FWS, and the Park Service.

Article 402 requires Northern to operate and maintain streamflow monitoring devices and staff gages to monitor compliance with the operational requirements of the license, and adopts the agency suggestion that staff gages be made visible to permit public scrutiny of operations. Northern is also required to make project flow records available to the U.S. Geological Survey, the Park Service, FWS, and Natural Resources within 30 days of a request for these records.

## 2. Impoundment Drawdown

Owners of property on the shoreline of the Trego impoundment, acting as the Trego Lake District (District),



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commented that sediment and weeds limit access to the impoundment for recreational purposes. Natural Resources estimates that this sediment is deposited by the Namekegon River at a rate of 2,000 cubic yards a year, causing shallow water at the upper end of the impoundment, thereby encouraging weed growth and the development of wetlands. The District recommends a one-month drawdown of four to five feet every four to five years to remove sediment and associated weeds. Natural Resources sees no immediate need for a drawdown, but recommends that Northern prepare a drawdown management plan in consultation with the resource agencies and the District within one year of the effective date of a new license. Natural Resources recommends that plans for a drawdown include sediment management techniques that would avoid water quality problems caused by the resuspension of sediment, shown by core sampling studies to contain heavy metals in concentrations above those allowed by Environmental Protection Agency guidelines. Interior agrees that a drawdown management plan should be prepared. Both agencies are concerned about the impact of a drawdown on resident fish, amphibians, and aquatic vegetation.

Northern agrees to cooperate with the District and the resource agencies in developing drawdown management plans and in conducting project maintenance drawdowns. Because the dam is in very good condition, however, Northern does not expect a maintenance drawdown for many years. Northern proposes that a plan be developed when needed, and opposes a license requirement to develop a plan within one year of the effective date of a new license. Northern is willing to work with Natural Resources on sediment management techniques, but states that it should not be held accountable for contaminants that originate elsewhere in the watershed.

We agree with Natural Resources' recommendation that sediment sampling be done in conjunction with any planned drawdown. Should new evidence show the need for sediment management techniques, standard license Article 11 will allow the agencies to recommend changes in project structures and operations for the conservation and development of fish and

wildlife resources.

We considered the District's drawdown proposal, the lack of technical evidence supporting the proposal, the concerns of the resource agencies about the environmental impacts of a drawdown, and the cost of a drawdown in lost power generation and economic benefits. 28/ The previous drawdown that removed weeds and

28/ Drawdown of the project during winter will necessitate shut-down of project generation. We estimate that a one-month project shut-down would reduce project generation by about  
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sediment was an eleven-foot drawdown maintained for a period of several months during the winter. We question whether the District's proposed thirty-day drawdown of four to five feet will produce the desired result of allowing greater access to the impoundment. 29/ Therefore, we conclude that Northern should conduct a further study to substantiate the need for a drawdown and, if a need is substantiated, develop a plan in consultation with all interested parties. We are further requiring that the issue be reevaluated on a recurring basis every four years because of the high value of the project impoundment for recreational activity as part of a Wild and Scenic River. Article 405 contains these requirements.

### 3. Restoration of Lake Sturgeon and Gilt Darter

The lake sturgeon and the gilt darter are state-protected species that were historically found throughout the Namekagon River until the presence of the Trego Project limited the range of both to below the project. Northern has agreed to provide Natural Resources with funding, totalling \$5,000, to support a program to restore the lake sturgeon upstream of the Trego Dam. In addition, Northern will provide Natural Resources with \$500 for a habitat assessment study of the gilt darter and, if the study indicates that restoration of the gilt darter is feasible, an additional \$2,000 for restoration efforts. This program is designed to expand the geographic range of the species, increase

population size, and eventually remove the species from the protected list. License Article 403 adopts these provisions.

#### 4. Trashracks and Fish Passage Facilities

Natural Resources asserts that the project causes fish entrainment, but states that the extent to which entrainment causes fish mortality will not be known until the results from

28/ (...continued)

580,000 kilowatthours (kWh). We further estimate that the 50-year levelized cost of alternative fuel for Northern to replace the lost generation would be about 42.0 mills/per kWh. Based on this information, we estimate that a one-month shut-down would cost Northern about \$24,000. This amounts to about 7.5 percent of the project's gross benefits in any one year.

29/ Northern executed an eleven-foot drawdown in November and December of 1978 in order to repair the dam. This drawdown scoured out most of the sediment and vegetation in the upper impoundment and restored the bottom to near pre-impoundment condition. Natural Resources estimates that this process resulted in the relocation of about 20,000 cubic yards of sediment.



ongoing and planned studies from other locations within the state are obtained. Therefore, Natural Resources recommends that the license provide that resource agencies be able to recommend modification of project structures and operation should new information indicate that changes are necessary to mitigate the Trego Project's effects on fish. Northern asserts that the project's potential for causing fish mortality is low and cites the robust fish population in both the Trego impoundment and the Namekagon River downstream of the project. Northern proposes that trashracks be maintained at a 1.5-inch bar-spacing to keep moderate and large fish out of the turbines, and allow larval and juvenile fish, for which there is no practical means of exclusion, to pass through the turbines and add to the downstream

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fishery. We conclude that Northern's proposal to maintain the existing trashracks minimizes the project's effect on most resident fish and find that there is no evidence to support alteration of the trashrack design. Standard license Article 11 allows the resource agencies to recommend changes in project structure and operation if, in the future, there is evidence that such changes are necessary for the preservation and conservation of fishery resources.

Natural Resources states that the current management objectives for the Namekagon River do not include facilities for upstream and downstream passage of fish at the Trego Project. As discussed above, Article 404 contains Interior's requested reservation of authority to prescribe fishways under Section 18 of the FPA.

#### F. OTHER AGENCY RECOMMENDATIONS

Pursuant to Section 10(a)(2)(B) of the FPA, the Commission is required to consider the recommendations of federal and state agencies exercising administration over navigation, flood control, irrigation, recreation, cultural, and other relevant resources of the state in which the project is located and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project. Relevant agency comments are discussed below.

##### 1. Recreation

A 1990 recreational use survey of the project area conducted by Northern was reviewed by the Northwest Regional Planning Commission (Planning Commission), 30/ which then conducted an inspection of existing recreational facilities and a recreation

30/ The Planning Commission refers to itself as an economic development district; its executive committee is comprised of representatives of counties and Indian tribal units in the northwest part of Wisconsin.

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needs assessment. Recreational facilities were found to be adequate to meet current recreational needs for the next five to ten years, except for minor improvements, detailed below, and maintenance. Natural Resources requested that data from this survey be made available for use as a baseline for decisions on future recreational needs and requested that surveys be done more frequently than in conjunction with Commission inspections at five-year intervals. FWS recommends that Northern either improve existing facilities or develop new facilities on the impoundment to optimize recreational use. Northern agrees to provide Natural Resources with the requested data, but states that it can see no reason for more frequent surveys.

The Planning Commission recommended that Northern: (1) provide signs indicating the parking area for walk-in fishing at North River Road; (2) dredge the upstream canoe take-out area; and (3) provide trash receptacles and restrooms for portage trail users. Northern agrees to make these improvements with the following exceptions: (1) Northern's hydrologist has determined that cutting aquatic vegetation in the canoe take-out area will improve access to that area, thereby avoiding the adverse environmental impacts of dredging; and (2) Northern states that the installation of permanent toilet facilities at the dam portage site would require that a septic field be placed very near to the earthen dike and the river, consequently Northern has agreed to consider placing portable toilet facilities at this site.

In addition to the improvements to recreational facilities agreed upon by all parties, we will require that Northern provide portable toilet facilities at the dam portage site during peak recreational use periods, and monitor recreational use in conjunction with the preparation of FERC Form 80, Licensed Hydropower Development Recreation Reports, which must be filed with the Commission every four years. Articles 407 and 408 adopt these requirements. We conclude that the planned recreational improvements are consistent with the stated management objectives of the Park Service for this area. 31/

## 2. Cultural Resources

Five prehistoric sites within or immediately adjacent to the reservoir have been identified. In addition, two historic structures and another prehistoric site were located but determined to be well outside of the project. A Programmatic Agreement among the Commission, the Advisory Council on Historic Preservation, and the Wisconsin State Historic Preservation

31/ See St. Croix Scenic Riverway Final Master Plan, National Park Service, October 1976.



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Office was signed on June 16, 1992. Article 406 adopts this agreement.

#### G. COMPREHENSIVE PLANS

Section 10(a)(2)(A) of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. 32/ Thirty-four federal and state agencies filed comprehensive plans that address various resources in Wisconsin. Of these, the staff identified and reviewed nine plans that are relevant to this project, and did not find any conflicts between the project and these plans. 33/

#### H. ECONOMIC EVALUATION

In determining whether a project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, pursuant to Section 10(a)(1) of the FPA, the Commission considers, among other things, whether the project will provide economic benefits. In considering this factor for this project, we considered the project with both the applicant's and the Commission's mitigative measures.

The cost of the Trego Project is 17.4 mills per kWh; the project's carrying costs amount to about 3.3 mills per kWh; and the operation and maintenance, administrative, and general costs

32/ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (1992).

33/ (1) St. Croix National Scenic Riverway Final Master Plan, 1976, National Park Service; (2) Land Protection Plan, 1984,

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St. Croix National Scenic Riverway, National Park Service; (3) Land Protection Plan 1984, Lower St. Croix National Scenic Riverway, National Park Service; (4) Statement for Management, St. Croix and Lower St. Croix National Scenic Riverways, 1986, National Park Service; (5) Comprehensive Master Plan for the Management of the Upper Mississippi River System - Environmental Report, 1986, National Park Service; (6) St. Croix River Basin Areawide Water Quality Management Plan, 1980, Wisconsin Department of Natural Resources; (7) Statewide Comprehensive Outdoor Recreation Plan, 1985, Wisconsin Department of Natural Resources; (8) An Evaluation of the Sedimentation Process and Management Alternatives for the Trego Flowage, Washburn County, Wisconsin, 1989, Wisconsin Department of Natural Resources; and (9) North American Waterfowl Management Plan, 1986, U.S. Fish and Wildlife Service and Canadian Wildlife Service.

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amount to about 14.4 mills per kWh. The total cost of 17.4 mills per kWh is less than the value of the project power, which is 42.0 mills per kWh. Therefore, we conclude that the continued operation of the Trego Project is economically beneficial.

#### I. SUMMARY OF FINDINGS

Sections 4(e) and 10(a)(1) of the FPA 34/ require the Commission, in acting on applications for license, to give equal consideration to the power and development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration. We conclude that the Trego Project does not conflict with any planned or authorized development and is best adapted to comprehensive development of the waterway for beneficial public uses.

Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA. Issuance of the license is not a major federal action significantly affecting the quality of the human environment.

The project will be safe if operated and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Design Assessment, which is available in the Commission's public file on this project.

#### J. PROJECT RETIREMENT

The Commission has issued a Notice of Inquiry (NOI), dated September 15, 1993, requesting comments that address the potential decommissioning of licensed hydropower projects at some future time, based on project-specific circumstances. 35/ The NOI states that the Commission is not proposing new regulations at this time, but is inviting comments on whether new regulations may be appropriate. Alternatively, the Commission may consider issuing a statement of policy addressing the decommissioning of licensed hydropower projects, or take other measures. The Trego

34/ 16 U.S.C. §§ 797(e) and 803(a)(1).

35/ Notice of Inquiry, Project Decommissioning at Relicensing, Docket No. RM93-23-000, September 15, 1993.

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Project may be affected by future actions that the Commission takes with respect to issues raised in the NOI. Therefore, the license includes Article 202, which reserves authority to the Commission to require the licensee to conduct studies, make financial provisions, or otherwise make reasonable provisions for decommissioning of the project in appropriate circumstances.

By including Article 202, the Commission does not intend to prejudice the outcome of the NOI. We are simply including the

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article so that we will be in a position to make any lawful and appropriate changes in the terms and conditions of this license, which is being issued during the pendency of the NOI, based on the final outcome of that proceeding.

#### K. TERM OF LICENSE

Section 15(e) of the FPA 36/ specifies that any new license issued shall be for a term which the Commission determines to be in the public interest, but not less than thirty years nor more than fifty years from the date on which the license is issued. We apply this provision to subsequent licenses, as well. Commission policy establishes thirty-year terms for projects proposing no new construction or capacity, forty-year terms for projects proposing a moderate amount of new development, and fifty-year terms for projects proposing a substantial amount of new development. 37/ Northern proposes no redevelopment of existing project facilities and no changes in project operation. Accordingly, under our policy the new license for the Trego Project would be for a term of thirty years.

However, about thirty miles upstream from the Trego Project is Northern's Hayward Project No. 2417. The original license for the Trego Project expired on March 31, 1993, and the original license for the Hayward Project expired on December 31, 1993. Northern has filed subsequent license applications for both projects. Commission action on the Hayward Project is targeted for the latter half of 1994. In order to facilitate the Commission's future coordinated treatment of these two projects under the comprehensive development standard of the FPA, we will add 18 months to the Trego Project license term, so that, if the Hayward Project is in line to receive a subsequent 30-year license, its license term can be adjusted in order that both

36/ 16 U.S.C. § 808(e).

37/ See Montana Power Company, 56 FPC 2008, 2011-13 (1976).



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project licenses will expire at approximately the same time. 38/

The Commission orders:

(A) This license is issued to Northern States Power Company (licensee) for a period of thirty-one years and six months, effective the first day of the month in which this order is issued, to operate and maintain the Trego Hydroelectric Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and is subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, shown by Exhibit G-1, FERC No. 2711-1, showing the project's location.

(2) Project works consisting of: (1) a northeastern earthfill embankment section with a length of 380 feet and a maximum height of about 30 feet; (2) a southwestern earthfill embankment section with a length of 110 feet and a maximum height of about 25 feet; (3) an Ambursen-type buttress, hollow, concrete gravity spillway structure 92 feet long by 27 feet high, surmounted by three Taintor gates, each 25.5 feet long by 10 feet high, and a 6-foot-wide trash gate and sluiceway; (4) a reservoir about 6 miles long, with a surface area of 470 acres and an estimated capacity of 4,700 acre-feet at the normal water surface elevation of 1035.0 feet National Geodetic Vertical Datum (NGVD); (5) a reinforced concrete, steel, and brick powerhouse 59.5 feet long by 30.2 feet wide by 74 feet high above the foundation, located adjacent to the left end of the spillway structure; (6) powerhouse generating equipment consisting of two open flume vertical-axis Francis turbine-generator units rated at 700 kilowatts (kW) and 500 kW, for a total installed capacity of 1,200 kW; (7) a small substation; and (8) appurtenant equipment and facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F below:

38/ If, for some reason the Hayward license is issued later than we currently expect, it would not receive less than a 30-year license. By adding the 18 months to Trego's license term, we have some flexibility, even if the Hayward license is issued later than we currently expect, to coordinate the project licenses' expiration dates by adding a few months to the Hayward license.



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Exhibit A - The following sections of Exhibit A filed March 27, 1991:

Section 1.1, page 7, entitled "Existing Facilities," describing the generators; Section 2.0, page 7, entitled "Type of Hydraulic Turbines," describing the turbines; Section 10.0, page 12, entitled "Purpose of Project," describing the substation and transmission facilities; and the other sections of Exhibit A describing the appurtenant equipment.

Exhibit	FERC No.	Showing
F-1	2711-1	Principal project works - plan, section, and elevation
F-2	2711-2	Principal project works - plan, section, and elevation, and powerhouse
F-3	2711-3	Principal project works - powerhouse floor plan

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibits A, F, and G described above are approved and made part of the license.

(D) The following sections of the FPA are waived and excluded from the license for this minor project:

4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the FPA that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(E) This license is subject to the articles set forth in Form L-9 (October 1975), entitled "TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MINOR PROJECTS AFFECTING NAVIGABLE WATERS OF THE UNITED STATES," and the following additional articles:

Article 201. The licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued, for the purpose of reimbursing the United



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States for the cost of administration of Part I of the FPA, as determined by the Commission. The authorized installed capacity for that purpose is 1,880 horsepower.

Article 202. The Commission reserves authority, in the context of a rulemaking proceeding or a proceeding specific to this license, to require the licensee at any time to conduct studies, make financial provisions, or otherwise make reasonable provisions for decommissioning of the project. The terms of this article shall be effective unless the Commission, in Docket No. RM93-23, finds that the Commission lacks statutory authority to require such actions, or otherwise determines that the article should be rescinded.

Article 401. The licensee shall operate the project in a run-of-river mode so that, at any point in time, streamflow, as measured immediately downstream from the project tailrace, approximates the sum of inflows to the Trego impoundment. Under

normal operating conditions, the licensee shall maintain the elevation of the Trego impoundment at a target elevation of 1,034.9 feet msl, with fluctuations limited to 0.3 foot around the target elevation, or between elevations 1,034.6 and 1,035.2 feet msl. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee, the Wisconsin Department of Natural Resources, the National Park Service, and the U.S. Fish and Wildlife Service. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than ten days after each such incident.

Article 402. The licensee shall operate and maintain the existing headwater and tailwater streamflow monitoring equipment and staff gages in the Namekagon River to monitor compliance with the run-of-river mode of operation as stipulated by Article 401. Furthermore, the licensee shall provide improved visibility features on the staff gages to permit easy public scrutiny of operation. The project flow records shall be made available to the U.S. Geological Survey, the National Park Service, the U.S. Fish and Wildlife Service, and the Wisconsin Department of Natural Resources within thirty days of the agency's request for the data.

Article 403. Within six months from the effective date of this license, the licensee shall provide to the Wisconsin Department of Natural Resources \$5,000 for sturgeon restoration above Trego Dam and \$500 for a study to assess the potential for restoring the gilt darter above Trego Dam. If the assessment indicates that there are no gilt darters above the dam, and if suitable habitat is identified, the licensee shall provide up to \$2,000 to Natural Resources for restoration efforts. The licensee shall file a progress report on this matter with the



Commission, together with the comments of Natural Resources, within two years from the effective date of this license.

Article 404. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or to

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provide for the construction, operation, and maintenance, of such fishways as may be prescribed by the Secretary of the Interior pursuant to Section 18 of the FPA.

Article 405. The licensee shall prepare a drawdown management plan for Commission approval. The plan shall include two components: (1) a needs analysis, to be filed six months from the effective date of this license and subsequently updated at periodic intervals; and (2) if a need is identified initially or in the future, a drawdown implementation plan to be filed within six months of the initial determination of need.

The needs analysis shall include: (a) a study to determine the amount of recreational use at the Trego impoundment, (b) a qualitative and quantitative aquatic macrophyte survey to determine the extent of aquatic vegetation in the Trego impoundment, and (c) an analysis of the effect of the vegetation and sedimentation on recreational access and use of the Trego impoundment. The needs analysis shall also consider alternative management techniques and options to drawdown (e.g., dredging, chemical treatment), and an analysis of their costs, to maintain recreational use of the impoundment.

If a drawdown is needed, the licensee shall prepare a drawdown implementation plan to include: (a) an evaluation of the consistency of a drawdown with the management objectives of the Park Service, (b) the identification of appropriate pre-drawdown studies, including any sediment sampling in the impoundment, (c) an evaluation of the specific timing, degree, and duration of the proposed drawdown, (d) evidence that appropriate state permits have been obtained, and (e) a schedule for monitoring the effects of the drawdown. The licensee shall provide a 230-cfs minimum flow release at all times during any future drawdown and the subsequent refilling of the impoundment, and shall draw down the impoundment at a rate not to exceed one foot per day for the first four days of the drawdown.

The licensee shall conduct its needs analysis and all subsequent updates, and prepare any drawdown implementation plan(s), in consultation with the U.S. Fish and Wildlife Service, the National Park Service, the Wisconsin Department of Natural Resources, and the Trego Lake District. The licensee shall include with its filings documentation of consultation and copies of any comments and recommendations of the agencies and the Trego Lake District. If the licensee does not adopt a recommendation from any of the agencies, the filing shall include the licensee's reasons, based on project-specific information.

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The needs analysis shall be filed for Commission approval within six months from the effective date of this license. The needs analysis shall be updated by the licensee as required by the Commission's regulations, 18 C.F.R. § 8.11 (1993), in conjunction with the filing of the standard FERC Form 80, Licensed Hydropower Development Recreation Reports. If the needs analysis, or any subsequent updates, indicate that a need for a drawdown exists, the licensee shall proceed with the preparation of an implementation plan, as described above, and file the plan for Commission approval within six months after identifying a need. The Commission reserves the right to require changes to the implementation plan. Upon Commission approval of the plan, the licensee shall implement any measures required by the Commission.

Article 406. The licensee shall implement the provisions of the "PROGRAMMATIC AGREEMENT AMONG THE FEDERAL ENERGY REGULATORY COMMISSION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND THE WISCONSIN STATE HISTORIC PRESERVATION OFFICER FOR THE MANAGEMENT OF HISTORIC PROPERTIES AFFECTED BY THE TREGO HYDROELECTRIC PROJECT," executed on June 16, 1992. The Commission reserves the authority to require changes to any cultural resources management plan or plans at any time during the term of the license.

Article 407. The licensee shall provide the following recreational improvements at the project: (1) provide signs indicating the parking area for walk-in fishing off North River Road; (2) provide trash receptacles and portable toilets at its existing portage trail during the period between Memorial Day and Labor Day each year; and (3) periodically cut the emergent aquatic vegetation at its upstream canoe take-out area to improve access. In addition, the licensee shall provide its 1990 recreational use survey data to the Wisconsin Department of Natural Resources.

The licensee shall provide the recreational improvements after consultation with the U.S. Fish and Wildlife Service, the National Park Service, and the Wisconsin Department of Natural Resources. The completed facilities and access shall be shown on

the as-built drawings filed pursuant to this license.

The licensee shall file a report with the as-built drawings which shall include the entity responsible for operation and maintenance of the facilities and access, and documentation of resource agency consultation and copies of the agency comments and recommendations on the report after it has been prepared and provided to the agencies, including specific descriptions of how the agencies' comments are accommodated by the report. The report shall include a description of how the needs of the disabled were considered, and indicate the specific project facilities, if any, that would be available for use by the

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disabled. The licensee shall allow a minimum of thirty days for the agencies to comment and to make recommendations prior to filing the report with the Commission.

Article 408. The licensee, after consultation with the Wisconsin Department of Natural Resources, the National Park Service, U.S. Fish and Wildlife Service and other local agencies responsible for recreational facility planning, shall monitor recreation use of the project area to determine whether existing recreation facilities are meeting recreation needs. Monitoring studies shall begin within 6 years of the date this license is issued and follow the schedule thereafter for the submittal of FERC Form 80. Monitoring studies, at a minimum, shall include the collection of annual recreation use data.

Every 6 years during the term of the license, in accordance with the schedule for FERC Form 80, the licensee shall file a report with the Commission on the monitoring results. the report shall include:

- (1) annual recreation use figures;
- (2) a discussion of the adequacy of the licensee's recreation facilities at the project site to meet recreation demand;
- (3) a description of the methodology used to collect all

study data;

- (4) if there is a need for additional facilities, a recreation plan proposed by the licensee to accommodate recreation needs in the project area;
- (5) documentation of agency consultation and agency comments on the report after it has been prepared and provided to the agencies; and
- (6) specific descriptions of how the agencies' comments are accommodated by the report.

The licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations prior to filing the report with the Commission.

Article 409. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational,

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and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and

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occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph the licensee may, among other things, establish a program for issuing permits for the specified types of uses and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion,

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necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed. If no conveyance was made during the prior calendar year, the licensee shall so inform the Commission and the Regional Director in writing no later than January 31 of each year.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for:

- (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained;
- (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained;
- (3) other pipelines that cross project lands or waters but do not discharge into project waters;
- (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained;
- (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina;
- (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and
- (7) other uses, if:
  - (i) the amount of land conveyed for a particular use is five acres or less;
  - (ii) all of the land conveyed is located at least seventy-five feet, measured horizontally, from project waters at normal surface elevation;
  - (iii) no more than fifty total acres of project lands for each project development are conveyed under this clause in any calendar year.

At least sixty days before conveying any interest in project lands under this paragraph, the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use,

the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within forty-five days from the filing date,

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requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

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(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(F) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(G) This order is final unless a request for rehearing is filed within 30 days of the date of issuance of this order, pursuant to Section 313 of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

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Lois D. Cashell,  
Secretary.

APPENDIX NOT ON DISC

